

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD RAY JACKSON,

Petitioner, No. 2:02-cv-0946 FCD KJN P

vs.

TOM CAREY,

Respondent. ORDER

Petitioner, a state prisoner proceeding through counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 13, 2010, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

1 Before petitioner can appeal this decision, a certificate of appealability must
2 issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

3 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
4 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
5 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues
6 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

7 A certificate of appealability should be granted for any issue that petitioner can
8 demonstrate is ““debatable among jurists of reason,”” could be resolved differently by a different
9 court, or is ““adequate to deserve encouragement to proceed further.”” Jennings v. Woodford,
10 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

11 Petitioner has made a substantial showing of the denial of a constitutional right in
12 the following issue presented in the instant petition: whether there was insufficient evidence to
13 support the 2000 decision finding petitioner unsuitable for parole.²

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed July 13, 2010, are adopted in full;
16 2. Petitioner's application for a writ of habeas corpus is denied;

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22 ¹ Except for the requirement that appealable issues be specifically identified, the
23 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. Jennings, at 1010.

24 ² Petitioner raised three other issues. The magistrate judge directed petitioner to address
25 in his objections whether a certificate of appealability should be issued and, if so, as to which
issues. Petitioner's objections address only the insufficiency of evidence claim. Accordingly,
26 the undersigned finds that petitioner seeks a certificate of appealability only as to the
insufficiency of evidence claim.

1 3. A certificate of appealability is issued only as to the insufficiency of evidence
2 claim.

3 DATED: August 23, 2010.

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5 FRANK C. DAMRELL, JR.
6 UNITED STATES DISTRICT JUDGE